

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 March 2023

Public Authority: Charity Commission for Northern Ireland

Address: Marlborough House
Central Way
Craigavon
BT64 1AD

Decision (including any steps ordered)

1. The complainant requested information from the Charity Commission for Northern Ireland (the Charity Commission) relating to the names of all trustee board members for the Lower Shankill Community Association between 2018 and 2020.
2. The Commissioner's decision is that the Charity Commission is entitled to rely on section 40(2) of FOIA to withhold some of the requested information, namely the names of former trustees.
3. The Commissioner does not require the Charity Commission to take any steps.

Request and response

4. On 25 November 2022, the complainant made the following request for information to the Charity Commission:

"I would like to be provided with the names of all Trustee Board members for the Lower Shankill Community Association during the years 2018, 2019 and 2020. This should include all names that appeared on the NI Charity Commission website during this period, including those which were subsequently removed."

5. The Charity Commission provided the complainant with a link to where the names of current trustee members could be located on its website. However, it withheld the names of former trustee members citing section 40(2) of FOIA as its basis for doing so.
6. The Charity Commission upheld the use of section 40(2) of FOIA in their internal review, dated 1 February 2023.

Reasons for decision

Section 40 - personal information

7. This reasoning covers whether the Charity Commission is entitled to rely on section 40(2) of FOIA to withhold some of the requested information.
8. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
9. Section 3(2) of the Data Protection Act 2018 defines personal data as:
“any information relating to an identified or identifiable living individual.”
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. In this case, the complainant has requested the names of former trustee board members. The Commissioner is satisfied that the withheld information relates to and would identify former trustee members. He therefore considers that the requested information falls within the definition of ‘personal data’ in section 3(2) of the DPA.
12. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focused here on principle (a), which states:
“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”
13. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
14. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate

interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is. In their internal review, the Charity Commission informed the complainant that the requested information was no longer in the public domain, and that once a trustee resigns from their position they are obliged to remove their details from the Commission's register of charities.

15. The Commissioner considers that in this case the complainant is pursuing a legitimate interest, as there is a public interest in the actions of charities and its former trustees, and that disclosure of the requested information is necessary to meet that legitimate interest.
16. However, the Commissioner accepts the Charity Commission's argument that the trustees would have a reasonable expectation that, once they step down, their personal information will no longer be in the public domain. Disclosure would be contrary to this reasonable expectation and would cause damage or distress in any situation.
17. The Commissioner has determined, therefore, that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the former trustee members. Therefore, he considers that there is no legal basis for the Council to disclose the withheld information and to do so would be in breach of principle (a).
18. The Commissioner's decision is that the Charity Commission is entitled to rely on section 40(2) of FOIA to refuse to provide the withheld information.

Right of appeal

19. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Michael Lea
Team Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF